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No. 80

Legislative Notice

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S. 1482 — Commercial Distribution of Material Harmful to Minors on the World Wide Web

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Reported by the Committee on Commerce, Science, and Transportation, on June 25, 1998,
without amendment. S. Rept. 105-225.

NOTEWORTHY

- S. 1482, introduced by Senator Coats, is designed to limit children's access to commercial pornography on the World Wide Web (Web) while complying with the parameters established by the Supreme Court in its decision last year on the Communications Decency Act of 1996 [*Reno v. ACLU*].
- S. 1482 does not ban the distribution or display of material harmful to minors. Rather, it requires the sellers of such material to recast their message in such a way as not to be readily available to children.
- It would require that those "engaged in the business of the commercial distribution of material that is harmful to minors shall restrict access to such material by persons under 17 years of age."
- The commercial distributor would be required to remove the unrestricted sexually explicit images from their Web pages and would have to get a credit card number, adult personal identification number, or adult access code in order for these to be viewed.
- Violators would face penalties of up to six months in jail and a \$50,000 fine (identical to provisions of the Dial-a-porn statute restricting children's access to phone sex).
- The bill provides an affirmative defense to prosecution that specifically reflects current commercial technology on the Web and complies directly with the parameters established by the Supreme Court. The restrictive measures are consistent with industry adult verification systems (AVS).

BACKGROUND

During the 104th Congress, the Senate voted 84 to 16 to adopt the Communications Decency Act (CDA) as part of the Telecommunications Act of 1996 [P.L. 104-104]. Among other things, the CDA was designed to address the growing concern of children's access to online pornography. The CDA targeted both obscenity (hard-core pornography) and indecency (soft-core pornography). The indecency provisions were challenged in court, with the Supreme Court ultimately striking these down [in *Reno v. ACLU*, 117 S. Ct. 2329 (1997)]. The Supreme Court's decision was primarily based on First Amendment concerns with the indecency standard and the impact these provisions would have on non-commercial content providers.

As a result of the Supreme Court's decision in *Reno*, Senator Coats decided to introduce legislation designed to shield children from exposure to online commercial pornography while complying with the parameters established by the Court. S. 1482 is narrowly tailored to restrict children's access to material on the Web that is harmful to minors, and at the same time, it protects the First Amendment rights of adults to view such material. The means of restricting access established under the bill are both technically and economically feasible for the commercial content provider on the Web, and present no meaningful hurdle for the potential adult consumer. The Supreme Court has repeatedly affirmed the compelling governmental interest in protecting the physical and psychological welfare of children. Further, the Court has repeatedly upheld as constitutional narrowly tailored statutes designed to restrict the commercial distribution of pornography to minors.

It has been held that it is the responsibility of the content provider to restrict access by minors to pornographic material, even where voluntary measures are available. For example, in "dial-a-porn" cases, the courts have upheld the requirement that the "speaker" of indecent telephone speech bears the burden of keeping his speech away from children, despite the existence of commercially available blocking devices for the home.

A similar bill, H.R. 3783, known as the Child Online Protection Act, has been introduced in the House.

BILL PROVISIONS

Target of the Legislation

The legislation targets commercial distribution of pornography on the World Wide Web. It is here that most of the commercial activity in pornography occurs. Commercial transactions in pornography on the Web are executed primarily through credit card transactions. However, purveyors of pornography generally will display many unrestricted and explicit images on their Web page in order to advertise and entice the viewer into exploring their product.

Children can move from Web page to Web page, viewing and down-loading the free images with no restrictions. There are tens of thousands of such free images available from commercial providers.

S. 1482 amends the Communication Act to ban the commercial distribution of material that is "harmful to minors" who are less than 17 years old.

This legislation would require the commercial distributor to remove the free images, or require a credit card, adult personal identification number, or adult access code in order to view them.

- The bill provides that commercial distribution of material harmful to minors under 17 years of age via the World Wide Web, whether interstate or foreign commerce, is illegal.
- Violators will be fined a maximum of \$50,000, imprisoned for a maximum of six months, or both.
- Intentional violators are to be fined for each individual offense, with each day of violation constituting a separate offense.
- In addition, the bill establishes a limit of \$50,000 in civil penalties, with each day of violation constituting a separate violation.
- The bill establishes an affirmative defense to prosecution if the defendant has restricted access to material harmful to minors under 17 years of age by requiring use of a verified credit card, debit account, adult access code, or adult personal identification number, or any other procedures prescribed by the FCC.
- The FCC may not regulate content on the World Wide Web.
- The bill defines "material that is harmful to minors." That definition is based on the New York statute that was upheld in *Ginsberg v. New York*. "Sexual act" and "sexual contact" are defined in section 2246 of title 18, U.S. Code. Included in the definition is a requirement that the material be sexually explicit in nature and that it lack serious literary, artistic, political, or scientific value.
- There are 48 states that have "Harmful to Minors" statutes. They are used to restrict children's access to pornographic magazines, adult videos, etc.
- The Department of Justice and the FCC are each required to post the definition of material that is harmful to minors on their respective Web sites.

ADMINISTRATION POSITION

There was no statement of administration position available at press time.

COST

The Congressional Budget Office estimates that the bill would have no significant effect on the federal budget.

POSSIBLE AMENDMENTS

Senator Durbin may offer an amendment.

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